

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAYMOUNT URGENT CARE PC, AND
ROBERT A. CLINTON, JR., INDIGO
INSTALLATIONS, INC., AND CHRISTOPHER A.
TURRENTINE, individually, and on behalf of all
those similarly situated,

Case No. 1:22-cv-01245-JSR

Plaintiffs,

v.

GOFUND ADVANCE, LLC, FUNDING 123, LLC,
MERCHANT CAPITAL LLC , ALPHA
RECOVERY PARTNERS, LLC, YITZCHOK WOLF,
YOSEF BREZEL, JOSEPH KROEN, and YISROEL
C. GETTER,

Defendants.

AFFIDAVIT OF YISROEL C. GETTER

Yisroel C. Getter being duly sworn, hereby deposes and states the following:

1. I am over the age of 18 and reside in the State of New York. I am an authorized representative of Defendant Funding 123, LLC (“Funding 123”) and, as such, I am fully familiar with the facts and circumstances stated herein. I am authorized to make this affidavit on behalf of Funding 123.

2. I have reviewed Funding 123’s books and records as they pertain to this file and am fully familiar with such. The business records annexed to this Affidavit are made in the regular course of business and are maintained under my supervision and control. The records were made in the regular course of Funding 123’s business at or around the time of the transactions reflected therein (or within a reasonable time thereafter). The information reflected in the records was given

to the recorder by someone with personal knowledge and a business duty to transmit the information accurately.

3. I make this Affidavit in support of the Opposition to the Motion of Plaintiffs Haymount Urgent Care PC (“Merchant”) and Robert A. Clinton, Jr. (“Dr. Clinton”) (together, “Movants”) for a Preliminary Injunction against GFA (the “Motion”).

4. Funding 123 is a Connecticut limited liability company engaged in the receivable financing business. Funding 123 is a separate legal entity from GFA.

5. On December 27, 2021, Funding 123 and Merchant entered into an agreement for the Purchase and Sale of Future Receivables (the “Funding 123 Agreement”) pursuant to which Funding 123 purchased 45% (the “Purchased Percentage”) of Merchant’s total future accounts receivable up to the sum of \$2,700,000 (the “Purchased Amount”) in exchange for an upfront purchase price of \$2,000,000 (the “Purchase Price”). A true and correct copy of the Funding 123 Agreement is attached hereto as **Exhibit A**.

6. Merchant agreed to remit the Purchased Amount to Funding 123 via daily ACH debits in the amount of \$80,000 (the “Remittance”). The parties agreed that the Remittance was a good faith estimate of the Purchased Percentage multiplied by the revenues of Merchant.

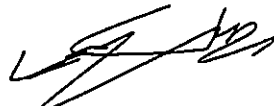
7. The parties agreed that Funding 123 would fund the Purchase Price in two parts. In particular, the parties agreed that Funding 123 would fund an initial payment of \$900,000 and then, after ten (10) daily payments, would fund a second payment of \$700,000. A true and correct copy of a text message evidencing the parties’ agreement is attached hereto as **Exhibit B**. The total payment of \$1,600,000 reflected the Purchase Price of \$2,000,000 less applicable fees of 20%, which were clearly and explicitly disclosed in Appendix A to the Funding Agreement, entitled “THE FEE STRUCTURE.”

8. Funding 123 funded the initial part of the Purchase Price in the amount of \$900,000. After receiving this initial payment, however, Dr. Clinton, on behalf of Merchant, advised Funding 123 that Merchant did not want the second part of the Purchase Price in the amount of \$700,000. Funding 123 complied with Merchant's request and did not second the second part of the Purchase Price.

9. As a result of Merchant's declining the second part of the Purchase Price, however, the calculations under the Funding 123 Agreement changed. The purchase price of \$2,000,000 became \$1,125,000 (\$1,125,000 less 20% in applicable fees equals \$900,000) (the "Amended Purchase Price) and the purchased amount became \$1,518,750 (the Amended Purchase Price of \$1,125,000 multiplied by the factor rate of 1.35 equals \$1,518,750).

10. Merchant remitted \$1,520,000 under the Funding 123 Agreement meaning that Merchant overpaid by a mere \$1,250, which amount Funding 123 will refund to Merchant. A true and correct copy of Funding 123's payment history on this transaction is attached hereto as **Exhibit C**.

11. I am advised by counsel that Dr. Clinton states in his Affidavit in support of Movant's Motion that Merchant overpaid \$170,000 to Funding 123 in unauthorized overpayments related to the Funding 123 Agreement by way of Funding 123's alleged unlawful debiting from Merchant's bank account. As set forth above, this statement is incorrect.



Yisroel C. Getter

ACKNOWLEDGMENT

STATE OF NEW YORK)
 ss:
COUNTY OF Kings)

On March 16, 2022 before me, the undersigned, personally appeared Yisroel C. Getter, an authorized representative of Funding 123, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his representative capacity, and that by his signature on the instrument, he executed the instrument.


Notary Public

BREINDY KRAUSZ
Notary Public, State of New York
No. 01KR6390280
Qualified in Kings County
Commission Expires April 15, 2023